



STATE OF NEW MEXICO
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD

IN THE MATTER OF PROPOSED REVISIONS
TO THE INFRASTRUCTURE STATE IMPLEMENTATION
PLAN FOR THE NITROGEN DIOXIDE NATIONAL
AMBIENT AIR QUALITY STANDARD

No. EIB 12-04(R)

PETITION FOR REGULATORY CHANGE

The New Mexico Environment Department ("Department"), pursuant to 20.1.1 NMAC - Rulemaking Procedures, petitions the Environmental Improvement Board ("Board") to approve an "infrastructure" state implementation plan for the revised National Ambient Air Quality Standard for Nitrogen Dioxide. The proposed plan and a statement of reasons are attached. The Board is authorized to adopt these regulations by the Air Quality Control Act, NMSA 1978 § 74-2-5.

The Department requests that the Board schedule the hearing for November, 2012 during its regular meeting. The Department anticipates that its testimony regarding the SIP revisions will require one hour or less.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT
OFFICE OF GENERAL COUNSEL

Bill Grantham

Assistant General Counsel
New Mexico Environment Department
1190 St. Francis Drive, Suite N-4050
Santa Fe, New Mexico 87505
Telephone: (505) 222-9594
bill.grantham@state.nm.us



115 115

**STATE OF NEW MEXICO
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD**

**IN THE MATTER OF PROPOSED REVISIONS
TO THE INFRASTRUCTURE STATE IMPLEMENTATION
PLAN FOR THE NITROGEN DIOXIDE NATIONAL
AMBIENT AIR QUALITY STANDARD**

No. EIB 12- 04(R)

STATEMENT OF REASONS

The New Mexico Environment Department proposes revisions to New Mexico's State Implementation Plan (SIP) under Section 110(a)(2) of the Federal Clean Air Act (CAA) for the revised National Ambient Air Quality Standard (NAAQS) for nitrogen dioxide (NO₂).

Section 110 of the CAA requires states to develop SIPs and programs to meet the NAAQS established by the United States Environmental Protection Agency (EPA) to protect public health and welfare. Section 110(a)(2) of the CAA requires states to submit SIP revisions to the Environmental Protection Agency (EPA) Administrator that provide for implementation, maintenance and enforcement of the NAAQS.

On February 9, 2010, EPA promulgated a revised NAAQS for NO₂. 75 Fed. Reg. 6474 (Feb. 9, 2010). Section 110(a)(1) of the CAA, as interpreted by EPA, requires states to submit to the EPA Administrator an "Infrastructure SIP" that addresses the requirements of section 110(a)(2)(A) – (M) within 3 years after the promulgation of a NAAQS. Therefore the NO₂ infrastructure SIP is due in February, 2013. This SIP is a compilation of elements that demonstrates how the State of New Mexico will implement, maintain and enforce the revised NO₂ NAAQS.

The Infrastructure SIP revision must be adopted by the New Mexico Environmental Improvement Board in order to be included as part of New Mexico's state implementation plan. Once the Infrastructure SIP is adopted and approved by EPA, it will provide a federally enforceable written confirmation of how New Mexico will continue to comply with the section 110(a)(2) requirements of the CAA for the NO₂ NAAQS.

State of New Mexico
“Infrastructure” SIP for Nitrogen Dioxide (NO₂)

Executive Summary

A State Implementation Plan (SIP) identifies how the state will attain and maintain the primary and secondary National Ambient Air Quality Standards (NAAQS). The SIP contains regulations, source-specific requirements, non-regulatory items such as plans and inventories, and in some cases additional requirements promulgated by the U.S. Environmental Protection Agency (EPA). The initial SIPs were approved by EPA on May 31, 1972. A state may revise its SIP with EPA approval as necessary. The federally enforceable SIP for New Mexico is compiled in 40 CFR Part 52 Subpart GG.

The enclosed SIP matrix outlines the requirements of section 110(a)(2)(A) through (M) of the federal Clean Air Act (CAA) and addresses how New Mexico will satisfy each provision in order to implement, maintain and enforce the 2010 nitrogen dioxide (NO₂) NAAQS.

Legislative authority for New Mexico’s air quality program is codified in Chapter 74 (Environmental Improvement) of the New Mexico Statutes, which gives the State Environmental Improvement Board and the Environment Department the authority to implement the CAA in New Mexico.

The regulatory authority to implement CAA programs is contained in the New Mexico Administrative Code (NMAC), specifically Chapter 2 of Title 20 for Air Quality. The regulations codified at 20.2 NMAC are part of the approved New Mexico SIP and are cited in 40 CFR § 52.1620(c) unless otherwise stated.

Those requirements of CAA § 110(a)(2) that are in the approved SIP or recently submitted SIP revisions relate to enforceable emission limits and schedules for compliance; monitoring, source testing and emissions reporting; recordkeeping and reporting requirements; and permit fees. Some requirements, such as intergovernmental consultation, air quality modeling, and compliance with Part D of Title I of the CAA, are fulfilled during the development and submission to EPA as a SIP revision of attainment plans.

State of New Mexico

110(a)(2) SIP Provisions for Nitrogen Dioxide (NO₂)

§ 110(a)(2):	Requirement Summary	New Mexico's Provisions
§ 110(a)(2)(A)	Include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions or emissions rights), as well as schedules and timetable for compliance.	<p>The New Mexico Environment Department (NMED) has promulgated regulations to implement and enforce the NAAQS and other air quality standards. These regulations include economic incentives.</p> <p>New Mexico's enforceable emission limitations and other control measures are authorized by the Air Quality Control Act and those provisions of NMAC Title 20—Environment Protection, Chapter 2—Air Quality.</p> <p>The regulations authorized by Chapter 74-Environmental Improvement -- of the New Mexico Statutes Annotated (NMSA1978) are duly adopted by the Environmental Improvement Board. Where these provisions relate to Clean Air Act Section 110 requirements, SIP revisions have been submitted to and approved by EPA. EPA-approved SIP revisions are codified at 40 CFR Part 52, Subpart GG. New Mexico has an EPA-approved air permitting program for both major and minor sources, which ensures that all applicable requirements are included in the source's permit. See 20.2.72, 20.2.74, and 20.2.79 NMAC.</p> <p>NMED has determined that no reductions in NO₂ emissions are required for maintenance of the 2010 NO₂ NAAQS.</p> <p>New Mexico does not exempt from enforcement excess emissions that occur during start-up, shutdown, maintenance, or malfunction. Emissions in excess of permit or regulatory limits are presumptively violations, subject to affirmative defenses with the burden of proof on the respondent. See 20.2.7 NMAC.</p>
§ 110(a)(2)(B)	Provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor, compile, and analyze data on ambient air quality, and upon request, make such data available to the Administrator.	<p>New Mexico maintains an annual monitoring network for all the NAAQS and submits annual monitoring plans to EPA which describe how the State has complied with monitoring requirements and explains any proposed changes.</p> <p>Currently NMED operates NO₂ monitors in areas of the state where emissions of NO₂ are likely due to traffic or industry. All monitoring data is measured using EPA approved methods as either Reference or Equivalent monitors. All monitors are subjected to the quality assurance requirements of 40 CFR Part 58, Appendix A, and located at sites that have met the minimum siting requirements of Part 58, Appendix E. All data is submitted to EPA's Air</p>

§ 110(a)(2):	Requirement Summary	New Mexico's Provisions
		<p>Quality System (AQS) system in accordance with the schedule prescribed by 40 CFR Part 58.</p> <p>NMED presently does not operate any near road NO₂ monitors due to the absence of any CBSA with a population of 500,000 residents (Albuquerque is outside of NMED's jurisdiction). Nor does NMED operate any community-wide monitoring, due to the absence of any urban area with a population of 1,000,000 or more. If monitoring is required for the state in the future, all monitoring and quality assurance requirements will be followed as explained for existing sites.</p>
§ 110(a)(2)(C)	<p>Include a program to provide for enforcement the of measures in § 110(a)(2)(A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that NAAQS are achieved, including a permit program as required in parts C and D.</p>	<p>NMED has established regulations governing the enforcement of control measures, including attainment plans and permitting programs that regulate construction and modification of stationary sources. See 20.2.72, 20.2.74 and 20.2.79 NMAC. NMED's Prevention of Significant Deterioration (PSD) program applies to sources that emit greenhouse gases in accordance with EPA's tailoring rule. See 20.2.74.7AZ NMAC.</p>
§ 110(a)(2)(D)	<p>(i) Contain adequate provisions prohibiting any source or other type of emissions activity from emitting any air pollutant in amounts which will:</p> <p>(I) Contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard.</p> <p>(II) Interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility.</p> <p>(ii) Insure compliance with the applicable requirements CAA sections § 126 and 115 (interstate and international pollution abatement).</p>	<p>New Mexico currently does not have any NO₂ nonattainment areas nor is the state in close proximity to any other NO₂ nonattainment areas. EPA indicated that all areas of the country will be classified as attainment for the NO₂ NAAQS.</p> <p>New Mexico has twelve (12) major sources of NO₂ in the state. Total point source emissions for NO₂ in New Mexico equals 59,553 tons per year (tpy) and 84,181 tpy for mobile source emissions (based on the 2008 National Emission Inventory). Of these emissions, 17,702 tpy were emitted by the San Juan Generating Station, which will be subject to Best Available Retrofit Technology (BART) requirements under a state or federal implementation plan.</p> <p>Based on monitored NO₂ concentrations, the lack of NO₂ nonattainment areas in New Mexico or within close proximity and the proposed implementation of BART in the future, NMED has concluded that NO₂ emissions from New Mexico:</p> <ol style="list-style-type: none"> 1) Do not significantly contribute to nonattainment in or interfere with maintenance for any other state with regards to the NO₂ NAAQS; 2) Do not interfere with the measures required to implement prevention of significant deterioration or for the protection of visibility in any other state; and 3) Do not preclude the state from insuring compliance with CAA section § 126 and 115. <p>Consistent with 40 CFR 166(q)(2)(iv), New</p>

§ 110(a)(2):	Requirement Summary	New Mexico's Provisions
		Mexico's PSD program requires NMED to notify potentially affected states, tribes, and federal land managers of its intent to approve or disapprove a PSD permit application as provided in 20.2.74.400 (C) NMAC.
§ 110(a)(2)(E)(i)	Provide: (i) necessary assurances that the state (or, except where the administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the state or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under state (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of federal or state law from carrying out such implementation plan or portion thereof).	<p>New Mexico Statute § 74-2-5 "Duties and powers; environmental improvement board; local board" gives the New Mexico Environmental Improvement Board (EIB or board) authority to develop, implement and enforce the SIP.</p> <p>§ 74-2-5 provides the board adequate legal authority to adopt emission standards and compliance schedules applicable to regulated entities, and to adopt emission standards and limitations and any other measures necessary for attainment and maintenance of national standards.</p> <p>§ 74-2-5 also provides the board adequate legal authority to enforce applicable laws, regulations, standards, and compliance schedules, and seek injunctive relief. In addition, § 74-2-5.1 provides the department legal authority to enforce applicable laws, regulations, standards, and compliance schedules.</p> <p>The resources to carry out the implementation plan are provided through General Funds, Permit Fees, and the CAA §§ 103 and 105 grant process. Permit fees are collected under the authority of § 74-2-7.</p> <p>No organizations outside of NMED will participate in implementing or enforcing this SIP. New Mexico has adequate personnel to implement the SIP with respect to NO₂ requirements. Should EPA determine that New Mexico lacks adequate personnel to carry out the SIP, EPA may issue a finding with respect to that deficiency, which New Mexico would have a legal obligation to correct.</p> <p>New Mexico does not anticipate the need for additional resources to implement the plan for the NO₂ standard beyond those which have been utilized for the preparation of the plan and plan revisions submitted to EPA and other current programmatic demands.</p>
§ 110(a)(2)(E)(ii)	(ii) requirements that the state comply with the requirements respecting state boards under section 128, and	NMSA 1978 § 74-1-4 provides that the EIB contains at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to or who appear before the board on issues related to the Clean Air Act or Air Quality Control Act. Board members are required to recuse

§ 110(a)(2):	Requirement Summary	New Mexico's Provisions
		themselves from rule-makings in which their impartiality may reasonably be questioned. 20.1.1.111 NMAC
§ 110(a)(2)(E) (iii)	(iii) Necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provision.	Albuquerque-Bernalillo County is authorized to carry out all portions of New Mexico's SIP within Bernalillo County. See § 74-2-4. NMED and the state EIB retain oversight authority in the event the local authority fails to act. § 74-2-4 (D).
§110(a)(2)(F)	Require, as may be prescribed by the Administrator: (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection;	Regulatory requirements have been promulgated in 20.2.72 NMAC- <i>Construction Permits</i> , 20.2.70 NMAC- <i>Operating Permits</i> , and 20.2.79 NMAC- <i>Permits-Nonattainment Areas</i> (pertaining to sampling and testing). Requirements in 20.2.7.73 NMAC– <i>Notice of Intent and Emission Inventory Requirements</i> provide for the reporting of emissions inventories in a format established by NMED on a schedule prescribed by the regulation. 20.2.5 NMAC- <i>Source Surveillance</i> establishes the general requirements for maintaining records and reporting emissions, including record keeping, data submissions, and public access to emissions data.
§110(a)(2)(G)	Provide for authority comparable to that in section 303[pertaining to emergency powers] and adequate contingency plans to implement such authority.	New Mexico's Air Quality Control Act is adequate to constrain any sources of NO ₂ emissions, as necessary, in an emergency situation. Under NMSA § 74-2-10, the secretary of the department is authorized to bring suit to immediately restrain a person causing emissions that presents an imminent and substantial endangerment to the public health or welfare or to the environment, or to issue orders necessary to protect the public health or welfare or the environment and bring suit within 24 hours. If the secretary brings an action within that time, the order is effective for another forty-eight hours or for such longer period as may be authorized by the court pending litigation. New Mexico adopted an Air Pollution Episode Contingency Plan (8/12/91, 56 FR 38074) that addresses air pollution episodes and the occurrence of an emergency due to the effects of the pollutants on the health of persons. (Approval noted at 40 CFR § 52, Subpart GG). This contingency plan cites the State's legal authority provided to the secretary of

§ 110(a)(2):	Requirement Summary	New Mexico's Provisions
		the department under NMSA § 74-2-10 in the event that there is an emergency episode. The New Mexico Air Pollution Episodes Contingency Plan meets the requirements of 40 CFR 51, Subpart H (Prevention of Air Pollution Emergency Episodes).
§110(a)(2)(H)	Provide for revision of such plan: (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements, or to otherwise comply with any additional requirements established under this Act.	New Mexico's SIP is a compilation of regulations, plans, and submittals that act to improve and maintain air quality in accordance with national standards. The authority to develop or revise the SIP is based on the authority to adopt new regulations and revise existing regulations to meet the NAAQS. NMSA 1978 § 74-7-5 gives the board authority to perform these functions. § 74-7-5 also provides the board the authority to adopt regulations to abate, control, and prohibit air pollution throughout New Mexico in accordance with the provisions of State Rules Act [Chapter 14, Article 4, NMSA 1978]. Nothing in New Mexico's statutory or regulatory authority prohibits the State from revising the SIP in the event of a revision to the NAAQS, and New Mexico has routinely done so.
§110(a)(2)(I)	In the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D (relating to nonattainment areas);	Compliance under the NO ₂ standard will be evaluated with submitted SIP revisions for any future nonattainment areas. SIP revisions related to nonattainment areas will comply with Subpart D requirements, as applicable. The currently approved nonattainment area SIP provisions listed in 40 CFR § 52, Subpart GG also meet Subpart D requirements.
§110(a)(2)(J)	Meet the applicable requirements of § 121 (relating to consultation), section 127 (relating to public notification), and Part C (relating to prevention of significant deterioration of air quality and visibility protection);	All SIP revisions undergo public notice and hearing, which provides for comment by the public, including local political subdivisions. See 20.1.1 NMAC. Air quality data from New Mexico's monitoring network is published in real time on NMED's website. Additionally, as part of the 105 grant process New Mexico is required to submit monitoring data to the Air Quality System (AQS) in a timely manner. The website also contains information on the air quality index, and on ways the public can participate in regulatory and planning efforts. New Mexico has adopted 20.2.74 NMAC- <i>Prevention of Significant Deterioration</i> following the requirements outlined in 40 CFR 52 under section 161 of the CAA (42 U.S.C.A. § 7471) for prevention of significant deterioration. These provisions were approved by EPA as part of the SIP. 20.2.74 NMAC includes procedures for protection of

§ 110(a)(2):	Requirement Summary	New Mexico's Provisions
		<p>visibility in Class I areas.</p> <p>New Mexico submitted its Regional Haze SIP to EPA in June, 2011. EPA has proposed approval of all parts of the SIP except for the NOx BART determination, for which EPA has issued a federal implementation plan. The regional haze SIP and the NOx BART determination (as contained in either the SIP or FIP) will provide further visibility protection and improvements to federal Class I areas.</p>
§ 110(a)(2)(K)	<p>Provide for:</p> <p>(i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and</p> <p>(ii) the submission, upon request, of data related to such air quality modeling to the Administrator;</p>	<p>New Mexico has developed Air Dispersion Modeling Guidelines that follow EPA guidelines for air dispersion modeling. The New Mexico Air Dispersion Modeling Guidelines also include internal policy language. The Air Quality Bureau within NMED contains a modeling section with four qualified modelers, two with PhD's.</p> <p>Upon request, NMED will submit current and future data relating to modeling to EPA.</p>
§ 110(a)(2)(L)	<p>Require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover—</p> <p>(i) the reasonable costs of reviewing and acting upon any application for such a permit, and</p> <p>(ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V;</p>	<p>The fee requirements of 20.2.71 NMAC - <i>Operating Permit Emission Fees</i> and 20.2.75 NMAC - <i>Construction Permit Fees</i> were approved by EPA as meeting the CAA requirements and were incorporated into New Mexico's SIP (11/25/97, 62 FR 50514). New Mexico's Title V operating permit program (20.2.70 NMAC) was approved by EPA in 1997 (11/25/97, 62 FR 50514).</p>
§ 110(a)(2)(M)	<p>Provide for consultation and participation by local political subdivisions affected by the plan.</p>	<p>New Mexico state statute § 74-2-5.2 "State air pollution control agency; specific duties and powers of the department," requires advising; consulting; contracting with and cooperating with local authorities, other states, the federal government and other interested persons or groups in regard to</p>

§ 110(a)(2):	Requirement Summary	New Mexico's Provisions
		<p>matters of common interest in the field of air quality control; and initiation of cooperative action between a local authority and the department, between one local authority and another or among any combination of local authorities and the department for control of air pollution in areas having related air pollution problems that overlap the boundaries of political subdivisions; and entering into agreements and compacts with adjoining states and Indian tribes, where appropriate.</p> <p>The State's public participation requirements and procedures fulfill the requirements for consultation with local political subdivisions affected by the SIP.</p>